

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

SHANE LOUIS BURD,

Plaintiff,

vs.

DOCTOR KOHUT,

Defendants.

CV 16-00088-H-DLC-JTJ

ORDER

Plaintiff Shane Burd filed a Declaration for Entry of Default. (Doc. 14.) Mr. Burd alleges Defendants did not file a responsive pleading and it has been more than 70 days since Defendants were served. Rule 55 of the Federal Rules of Civil Procedure sets forth a two-step process regarding default judgments: (1) entry of default and (2) entry of default judgment. Neither are appropriate in this case. Rule 55(a) provides, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.”

In this case, the Clerk of Court was directed to send a request for waiver of service to Defendant on October 4, 2016. (Doc. 4.) Defendant filed a Waiver of Service on November 2, 2016, (Doc. 7) and timely filed an Answer to the

Complaint on December 5, 2016. (Doc. 8.)

Since Defendant timely answered Mr. Burd's Complaint, there is no basis for the entry of default or default judgment.

Accordingly, the Court issues the following:

ORDER

Mr. Burd's Declaration for Entry of Default (Doc. 14) is DENIED.

DATED this 19th day of December 2016.

/s/ John Johnston
John Johnston
United States Magistrate Judge